



## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

[CBP Dec. 22-13]

#### **Western Hemisphere Travel Initiative: Designation of an Approved Native American Tribal Card Issued by the Kickapoo Traditional Tribe of Texas as an Acceptable Document to Denote Identity and Citizenship for Entry in the United States at Land and Sea Ports of Entry**

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Commissioner of U.S. Customs and Border Protection is designating an approved Native American tribal card issued by the Kickapoo Traditional Tribe of Texas to U.S. citizen tribal members as an acceptable travel document for purposes of the Western Hemisphere Travel Initiative. The approved card may be used to denote identity and citizenship of Kickapoo Traditional Tribe of Texas members entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

**DATES:** This designation will become effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Adele Fasano, Executive Director, Planning, Program Analysis, and Evaluation, Office of Field Operations, U.S. Customs and Border Protection, via e-mail at [Adele.Fasano@cbp.dhs.gov](mailto:Adele.Fasano@cbp.dhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

*The Western Hemisphere Travel Initiative*

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Pub. L. 108-458, as amended, required the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a plan to require U.S. citizens and individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)) to present a passport or other document or combination of documents as the Secretary deems sufficient to denote identity and citizenship for all travel into the United States. *See* 8 U.S.C. 1185 note. On April 3, 2008, the Department of Homeland Security (DHS) and the Department of State promulgated a joint final rule, effective on June 1, 2009, that implemented the plan known as the Western Hemisphere Travel Initiative (WHTI) at U.S. land and sea ports of entry. *See* 73 FR 18384 (the WHTI Land and Sea Final Rule). The rule amended various sections in the Code of Federal Regulations (CFR), including 8 CFR 212.0, 212.1, and 235.1.<sup>1</sup> The WHTI Land and Sea Final Rule specifies the documents that U.S. citizens and nonimmigrants from Canada, Bermuda, and Mexico are required to present when entering the United States at land and sea ports of entry.

Under the WHTI Land and Sea Final Rule, one type of citizenship and identity document that may be presented upon entry to the United States at land and sea ports of entry from contiguous territory or adjacent islands<sup>2</sup> is a Native American tribal card that has been designated by the Secretary as an acceptable document to denote identity and citizenship, pursuant to section 7209 of IRTPA. *See* 8 U.S.C. 1185 note. Specifically, 8 CFR 235.1(e), as amended by the WHTI Land and Sea Final Rule, provides that once the Secretary of Homeland Security designates a U.S. qualifying tribal entity document as an

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<sup>1</sup> Part 212 of title 8 of the Code of Federal Regulations details the documentary requirements for nonimmigrants seeking admission into the United States; 8 CFR 235.1 provides for the scope of examination of all persons seeking admission into the United States.

<sup>2</sup> “Adjacent islands” is defined in 8 CFR 212.0 as “Bermuda and the islands located in the Caribbean Sea, except Cuba.” This definition applies to 8 CFR 212.1 and 235.1.

acceptable document to denote identity and citizenship for the purposes of entering the United States, Native Americans may present such designated tribal cards upon entering or seeking admission to the United States according to the terms of the voluntary agreement entered between the Secretary of Homeland Security and the tribe. It provides that the Secretary of Homeland Security will announce the designation of tribal cards as acceptable travel documents for entering the United States by publication of a notice in the *Federal Register*. It further provides that a list of the documents designated under this section will also be made available to the public.

Under 8 CFR 212.0, a U.S. qualifying tribal entity is defined as a tribe, band, or other group of Native Americans formally recognized by the United States Government which agrees to meet WHTI document standards.<sup>3</sup> Native American tribal cards are also referenced in 8 CFR 235.1(b), which lists the documents that U.S. citizens may use to establish identity and citizenship when entering the United States. *See* 8 CFR 235.1(b)(7).

The Secretary of Homeland Security has delegated to the Commissioner of U.S. Customs and Border Protection (CBP) the authority to designate certain documents as acceptable border crossing documents for persons arriving in the United States by land or sea from within the Western Hemisphere, including certain U.S. Native American tribal cards. *See* DHS Delegation Number 7105 (Revision 00), dated January 16, 2009.

#### *Tribal Card Program*

The WHTI Land and Sea Final Rule allowed U.S. federally recognized Native American tribes to enter into agreements with CBP to develop tribal ID cards that can be designated as acceptable to establish identity and citizenship when entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP

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<sup>3</sup> This definition applies to 8 CFR 212.1 and 235.1.

works with various U.S. federally recognized Native American tribes to facilitate the development of WHTI-compliant Native American tribal cards.<sup>4</sup> As part of the process, CBP and the Native American tribe will enter into an agreement that specifies the requirements for developing and issuing such cards, including a testing and auditing process that ensures that the cards are produced and issued in accordance with the terms of the agreement.

After a tribe produces cards in accordance with the specified requirements, and after successful testing and auditing by CBP of the cards and program, the Secretary or the Commissioner of CBP may designate the Native American tribal card as an acceptable WHTI-compliant document for the purpose of establishing identity and citizenship when entering the United States by land or sea from contiguous territory or adjacent islands. Such designation will be announced by publication of a notice in the *Federal Register*. More information about WHTI-compliant documents is available at [www.cbp.gov/travel](http://www.cbp.gov/travel).

The Pascua Yaqui Tribe of Arizona became the first Native American tribe to have its Native American tribal card designated as a WHTI-compliant document by the Commissioner of CBP. This designation was announced in a notice published in the *Federal Register* on June 9, 2011 (76 FR 33776). Subsequently, the Commissioner of CBP announced the designation of several other Native American tribal cards as WHTI-compliant documents. *See, e.g.*, the Native American tribal cards of the Puyallup Tribe of Indians, 84 FR 67278 (December 9, 2019); the Swinomish Indian Tribal Community, 84 FR 70984 (December 26, 2019); the Confederated Tribes of the Colville Reservation, 85 FR 31796 (May 27, 2020); and the Muscogee (Creek) Nation, 86 FR 6664 (January 22, 2021).

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<sup>4</sup> The Native American tribal cards qualifying to be a WHTI-compliant document for border crossing purposes are commonly referred to as “Enhanced Tribal Cards” or “ETCs.”

*Kickapoo Traditional Tribe of Texas WHTI-Compliant Native American Tribal Card Program*

The Kickapoo Traditional Tribe of Texas has voluntarily established a program to develop a WHTI-compliant Native American tribal card that denotes tribal identity and U.S. citizenship. On September 2, 2016, CBP and the Kickapoo Traditional Tribe of Texas entered into a Memorandum of Agreement (MOA) to develop, issue, test, and evaluate whether its Native American tribal cards could be used for border crossing purposes. Pursuant to this MOA, the cards are issued to members of the Kickapoo Traditional Tribe of Texas who can establish their identity, tribal membership, and U.S. citizenship. The cards incorporate physical security features acceptable to CBP, as well as facilitative technology allowing for the electronic validation by CBP of the tribal members' identity, citizenship, and tribal membership. On August 15, 2017, CBP and the Kickapoo Traditional Tribe of Texas entered into a Service Level Agreement that was an addendum to the April 1, 2010 Pascua Yaqui Tribe Service Level Agreement. The addendum provides that the Pascua Yaqui Tribe would serve as the Information Technology Coordinator and the manufacturer of the tribal card on behalf of the Kickapoo Traditional Tribe of Texas.<sup>5</sup>

CBP has tested the cards developed by the Kickapoo Traditional Tribe of Texas pursuant to the above MOA and related agreements. It has also performed an audit of the tribe's card program. On the basis of these tests and audit, CBP has determined that the Native American tribal cards meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and citizenship for purposes of entering the United States at land and sea ports of entry from contiguous territory or adjacent islands.

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<sup>5</sup> The Interconnection Service Agreement entered into by CBP and the Pascua Yaqui Tribe on December 19, 2018, which addresses individual and organizational security responsibilities for the protection and handling of unclassified information, also applies with respect to the Kickapoo Traditional Tribe of Texas Native American tribal cards.

CBP's continued acceptance of the Native American tribal cards as a WHTI-compliant document is conditional on compliance with the MOA and related agreements.

It is voluntary for Native American tribal members to use WHTI-compliant tribal cards as an acceptable travel document. If a tribal member is denied a WHTI-compliant Native American tribal card, or otherwise chooses not to use a Native American tribal card, he or she may still apply for a passport or other WHTI-compliant document.

### *Designation*

This notice announces that the Commissioner of CBP designates the Native American tribal card issued by the Kickapoo Traditional Tribe of Texas in accordance with the MOA and related agreements as an acceptable WHTI-compliant document pursuant to section 7209 of the IRTPA and 8 CFR 235.1(e). In accordance with these provisions, the approved card, if valid and lawfully obtained, may be used to denote identity and U.S. citizenship of Kickapoo Traditional Tribe of Texas members for the purpose of entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

Commissioner Chris Magnus, having reviewed and approved this document, has delegated the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the *Federal Register*.

Dated: June 21, 2022.

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Robert F. Altneu,  
Director, Regulations & Disclosure Law,  
Division,  
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U.S. Customs and Border Protection.